

REMARKS

Claims 1, 8, 9, 11, 18 and 20-24 have been amended. Claim 10 has been cancelled. Claim 26 has been added. Therefore, claims 1-9 and 11-26 are pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 112, Second Paragraph, Rejection:

The Examiner rejected claim 12 under 35 U.S.C. § 112, second paragraph, as being indefinite in regard to the phrase "the weight" lacking antecedent basis. However, a weight is an inherent property of the device referenced in claim 12. "Inherent components of elements recited have antecedent basis in the recitation of the components themselves." M.P.E.P. § 2173.05(e); *see also, Bose Corp. v. JBL, Inc.*, 274 F.3d 1354, 1359, 61 USPQ2d 1216, 1218-19 (Fed. Cir. 2001). Therefore, the rejection is improper and withdrawal thereof is respectfully requested.

Section 112, First Paragraph, Rejection:

The Examiner rejected claims 18-20 under 35 U.S.C. § 112, first paragraph, as lacking enablement. The Examiner states: "Claim 18 includes "a method", however the method as disclosed in the specification is a method of detecting and diverting fluid. This rejection is clearly improper. The acts of receiving a fluid and diverting the fluid to a viewable location are recited in the body of claim 18. There is no requirement that the purpose or details of the method be recited in the preamble. The method recited in claims 18-20 is clearly enabled by Applicant's specification. The rejection is without merit and withdrawal thereof is respectfully requested.

Section 102(b) Rejection:

The Examiner rejected claims 1-4, 18 and 21 under 35 U.S.C. § 102(b) as being anticipated by GB 2272553 (hereinafter "GB'553"), claims 1-5, 8, 9, 12, 17, 18, 20, 21

and 24 as being anticipated by DE 10062361 (hereinafter "DE'361"), claims 1-5, 8, 9, 12, 17, 18, 20 and 21 as being anticipated by Jones (U.S. Patent 4,413,592) and claims 1-5, 8, 10, 11, 18, 21 and 22 as being anticipated by Miller (U.S. Patent 5,199,457).

In regard to claim 1, none of GB '553, DE '361 or Jones teach a permeable surface coupled to the leak diversion device to allow fluid from the device to flow through the permeable surface onto the slanted surface. GB '553 shows an open pan with no permeable surface through which fluid flows onto a slanted surface of the pan. DE '361 appears to show a pan underneath an appliance, but there is no permeable surface in DE '361 through which fluid would flow into the pan underneath the appliance. Jones shows an open pan with no permeable surface through which fluid flows onto a slanted surface of the pan. Therefore, claim 1 is clearly not anticipated by GB '553, DE '361 or Jones.

Further in regard to claim 1, none of GB '553, DE '361 or Miller teach a leak diversion device comprising a slanted surface positioned to contact fluid released from the device at a location not viewable to a user of the device, wherein the fluid on the slanted surface flows down the slanted surface to a predetermined location external to the leak diversion device and viewable by the user of the device. To the contrary, each of GB '553, DE '361 and Miller appear to disclose enclosed pans purposefully designed to retain and leaked fluid. In fact, these references would appear to teach away from releasing the fluid to a predetermined location external to the leak diversion device and viewable by the user of the device.

In regard to claim 18, none of the cited reference teach the leak detection device receiving fluid leaked from the device, wherein the fluid is leaked from the device at a location not viewable to a user of the device, and diverting the fluid in contact with the leak diversion device along the slanted surface to a location external to the leak detection device that is visible to the user of the device. To the contrary, each of GB '553, DE '361 and Miller appear to disclose enclosed pans purposefully designed to retain and leaked fluid. Also, Jones specifically states: "The liquid caught is conveyed to a drainpipe and

from there can go to a sump pump or other disposal means.” Jones, col. 1, lines 46-48. Each of the cited references would appear to teach away from the method of claim 18.

In regard to claim 21, none of the cited references teach a pallet comprising an upper surface configured to support a device, an impermeable surface below the upper surface of the pallet configured to catch a fluid released from the device at a location not visible to a user of the device, wherein the upper surface of the pallet is located a distance above the impermeable surface to allow the pallet to be moved by a forklift without damaging the impermeable surface. None of the cited references have anything to do with a pallet, let alone a pallet having the specific features recited in claim 21.

Section 103(a) Rejection:

The Examiner rejected claims 6, 7, 9, 12-17, 19, 20 and 23-25 under 35 U.S.C. § 103(a) as being unpatentable over Miller. The Examiner stated that the features recited in these claims would be obvious. However, the Examiner provided no factual support for her assertions. Applicant specifically traverses the Examiner’s position that the features of these claims are well known or obvious when considered in combination with the other features of the respective claims. As the Court of Appeals for the Federal Circuit recently explained in *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), conclusory statements such as those provided by the Examiner that a claim limitation is well known or common knowledge do not fulfill the Examiner’s obligation. “Deficiencies of the cited references cannot be remedied by the [Examiner’s] general conclusions about what is ‘basic knowledge’ or ‘common sense.’” *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). “Common knowledge and common sense ... do not substitute for authority.” *Lee*. Common knowledge “does not in and of itself make it so” absent evidence of such knowledge. *Smiths Industries Medical Systems, Inc. v. Vital Signs, Inc.*, 51 USPQ2d 1415, 1421 (Fed. Cir. 1999).

Moreover, as the Federal Circuit stated in *In re Kotzab*, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000): “Most if not all inventions arise from a combination of old elements.

However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention." Merely stating that individual aspects of a claimed invention are well known does not render the combination well known without some objective reason to combine the individual teachings. *Ex parte Levengood*, 28 USPQ2d 1300.

The statute clearly places a burden of proof on the Patent Office which requires the Examiner to produce the factual basis for its rejection of an application under sections 102 and 103. *In re Warner*, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968). Since the Examiner's rejection under § 103(a) is not supported by any evidence of record, the rejection is improper and must be withdrawn.

Double Patenting Rejection:

The Examiner rejected claims 1-5, 17, 21, 22 and 24 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Pat. No.: 6,718,993. Applicant respectfully traverses this rejection for at least the following reasons.

The only support given by the Examiner for the rejection is "the apparatus as claimed are equivalent." This statement by the Examiner is clearly incorrect. A simple comparison of claims 1-5, 17, 21, 22 and 24 with claims 1-7 of U.S. Pat. No.: 6,718,993 reveals many differences in the claims. According to MPEP 804.II.B.1, "the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection." This section of the MPEP also states that the same "factual inquires ... that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are employed when making an obviousness-type double patenting analysis." MPEP 804.II.B.1 also states that the Examiner should list the differences between each rejected claim and the claims of the other patent/application, and for each difference the Examiner should give the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim is an obvious

variation of the invention defined in a claim of the other patent/application. The Examiner specifically addressed **each difference of each claim** of the present application compared to the claims of the other applications. Instead, the Examiner improperly lumped all the claims together and did not address each specific difference. The Examiner clearly has not met the requirements stated in MPEP 804.II.B.1 to establish a *prima facie* obviousness-type double patenting rejection. Accordingly, Applicants respectfully request removal of the double patenting rejection.

Moreover, the Examiner should reconsider the rejection in light of the above amendments to the claims.

CONCLUSION

Applicant submits the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5863-00101/RCK. **Applicant is a small entity.**

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Other:

Respectfully submitted,



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